

PETITION FOR ZONING RE-CLASSIFICATION  
SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R.C. 4 to B.R. Zone to an R.C. 4 to B.R. Zone, and (2) for a Special Exception under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Not Applicable

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County:

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: Legal Owner(s):  
Lawrence D. Pinkner, M.D.,  
(Type or Print Name)  
Signature: Robert A. Pinkner  
(Type or Print Name)  
Address: 210 Allegheny Avenue  
City and State: Baltimore, Maryland 21204  
Attorney for Petitioner: John B. Howard  
(Type or Print Name)  
Signature: 210 Allegheny Avenue  
Address: Towson, Maryland 21204  
City and State: Baltimore, Maryland 21204  
Attorney's Telephone No.: 823-4111  
Same: 484-8080  
Address: Phone No.

BACB-Form 1

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS  
from R.C. 4 to B.R. Zone  
E/S York Rd., 820' N of Ashland Rd., 8th District : OF BALTIMORE COUNTY  
LAWRENCE D. PINKNER, M.D., : Item 13, Cycle I  
Petitioner

ORDER TO ENTER APPEARANCE

To the Honorable, Members of Said Board:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman  
Deputy People's Counsel  
John W. Hession, III  
People's Counsel for Baltimore County  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 25th day of August, 1981, a copy of the foregoing Order was mailed to John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204, Attorney for Petitioner.

John W. Hession, III  
People's Counsel for Baltimore County

IN THE MATTER OF LAWRENCE D. PINKNER, M.D., et al, Petitioners  
VS.  
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY, et al  
IN THE CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
Docket 14 Folio 8  
Case No. 82-N-3

NOTICE OF FILING OF RECORD

TO: John B. Howard, Esquire  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21204

In accordance with Maryland Rule of Procedure 812, you are notified that the record in the above entitled case was filed on March 2, 1982.

John W. Hession, III  
Clerk

cc: June Holmen, County Board of Appeals for Baltimore County  
Room 200 Court House  
Towson, Maryland 21204

John W. Hession, III, Esq.  
Peter Max Zimmerman, Esq.  
Room 223, Court House  
Towson, Maryland 21204

FILED MAR 2 1982

IN THE MATTER OF LAWRENCE D. PINKNER, M.D., et al.,  
Plaintiff:  
VS.  
COUNTY BOARD OF APPEALS, et al.,  
Defendants  
IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW  
Misc. No. 82-M-3  
SUPPLEMENT TO ORDER FOR APPEAL

MR. CLERK:

People's Counsel for Baltimore County, Appellant, in reference to the Amended Opinion of the Court September 24, 1982, supplements its Order for Appeal previously filed to include an appeal to the Court of Special Appeals of the Amended Opinion as well as the initial Opinion. This Supplement to Order for Appeal is filed in the event that the Circuit Court had jurisdiction to issue an Amended Opinion subsequent to the filing of the Order for Appeal. The purpose of this Supplement to Order for Appeal is to assure that the Court of Special Appeals has jurisdiction to review the decisions of the Circuit Court for Baltimore County reversing the decision of the County Board of Appeals of Baltimore County in the present case. This Supplement is not intended to withdraw or dismiss the Order for Appeal previously filed.

RECEIVED  
BALTIMORE COUNTY  
SEP 30 11 01 AM '82  
BY

John W. Hession, III  
People's Counsel for Baltimore County  
Peter Max Zimmerman  
Deputy People's Counsel  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 27th day of September, 1982, a copy of the foregoing Supplement to Order for Appeal was mailed to John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204.

Peter Max Zimmerman  
Deputy People's Counsel

PETITION FOR RECLASSIFICATION : IN THE CIRCUIT COURT  
from R.C. 4 to B.R. Zone : FOR BALTIMORE COUNTY  
E/S York Rd. 820' N of Ashland Rd. 8th District : AT LAW  
LAWRENCE D. PINKNER, M.D., : Misc. Docket No. 14  
Petitioner/Appellee : Folio No. 8  
Zoning Case No. R-82-73 : File No. 82-M-3

MEMORANDUM IN OPPOSITION TO PETITION ON APPEAL

People's Counsel for Baltimore County submits the following memorandum:

The Court of Appeals in Howard County v. Dorsey, 293 Md. 351 (1982)

(attached) reiterated the strong presumption of correctness of comprehensive rezoning, and the need for "strong evidence" of error to overcome that presumption. It is presumed that the Council had before it and considered "all of the relevant facts and circumstances then existing." To prove error, the Petitioner must show clearly "a failure to take existing facts or events reasonably foreseeable of fruition into account," or, "that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect." Where the matter is "fairly debatable," the legislative judgment of the Council must be sustained.

For the reasons stated in the Post-Hearing Memorandum presented to the County Board of Appeals, a copy of which is attached hereto, the Petitioner failed to present any evidence sufficient to warrant a finding of error. On the record, the Board of Appeals was required to uphold the decision of the County Council and to deny the petition for reclassification.

John W. Hession, III  
People's Counsel for Baltimore County

IN THE MATTER OF LAWRENCE D. PINKNER, M.D., et al.,  
Plaintiffs  
VS.  
COUNTY BOARD OF APPEALS, et al.,  
Defendants  
IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AT LAW  
Misc. No. 82-M-3  
ORDER FOR APPEAL

MR. CLERK:

Please enter an appeal on behalf of the People's Counsel for Baltimore County from the Opinion and Order of the Circuit Court for Baltimore County dated August 24, 1982, and forward all papers in connection with said case to the Clerk of the Court of Special Appeals of Maryland in accordance with the Maryland Rules.

John W. Hession, III  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Deputy People's Counsel  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 25th day of September, 1982, a copy of the foregoing Order for Appeal was mailed to John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204.

Peter Max Zimmerman  
Deputy People's Counsel

RECEIVED  
BALTIMORE COUNTY  
SEP 30 1 12 PM '82  
BY

Peter Max Zimmerman  
Deputy People's Counsel  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 4th day of May, 1982, a copy of the foregoing Memorandum in Opposition to Petition on Appeal was delivered to Leslie M. Pittler, Esquire, Suite 204, 102 W. Pennsylvania Avenue, Towson, Maryland 21204; and John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204.

Peter Max Zimmerman  
Deputy People's Counsel

bcc: CBA w/ attachments

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BALTIMORE COUNTY  
MAY 2 2 4 PM '82  
BY



zones could be accepted unless an engineer certified that the property was more than 200 feet from the reservoir. Bill 178-79 states that no reclassification can be granted unless the engineer certifies, etc. In this case the 200 foot line is the easterly boundary of the Petitioner's proposal before this Board. The question then becomes; did the Council change the requirements for R.C. 4 reclassifications in Bill 178-79 and then fail to abide by its own rules by refusing to accept the compromise proposal made by the Petitioner at the 1980 comprehensive rezoning?

The Board interprets the 200 foot requirement in Bill 178-79 as a minimum standard only and not as a threshold requirement which demands reclassification if found. The Board is convinced the Council intended to exclude reclassifications within 200 feet and leave to this Board's discretion to grant if error is shown on R.C. 4 zoned land beyond the 200 feet. In the present case the Board finds no error in the present line.

#### ORDER

For the reasons set forth in the foregoing Opinion, it is this 8th day of December, 1981, by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

*John V. Murphy*  
John V. Murphy, Acting Chairman

*Patricia Phipps*  
Patricia Phipps

*John A. Miller*  
John A. Miller

PER CURIAM

People's Counsel for Baltimore County (Counsel) appeals a judgment of the Circuit Court for Baltimore County reversing the Order of the Board of Appeals of Baltimore County (the Board), which had denied appellees' petition to reclassify a portion of their property from R.C. 4 (Resource Conservation-Watershed Protection) to B.R. (Business Roadside).

Prior to the adoption of the 1976 Baltimore County Comprehensive Zoning Map, the appellees' entire 11.95 acre tract of land was zoned B.R. After the adoption of the 1976 map, only 4.75 acres remained in the B.R. zoning classification; the other 7.20 acres were reclassified into the new (1975) R.C. 4 classification. The appellees petitioned to reclassify 4.1 acres of the R.C. 4 acreage to the B.R. classification, thereby increasing their total B.R. acreage to 8.85 acres.

Appellees' vacant, partially wooded property is located on the east side of York Road opposite Shawan Road, 820 feet north of the York Road-Ashland Road intersection. It comprises the only vacant tract of land on the east side of York Road between Shawan Road and Ashland Road. The property has 666 feet of frontage on York Road. Although the depth of the B.R. zone along York Road is 300 feet, because of the proposed widening of both York Road and Shawan Road, and because of the

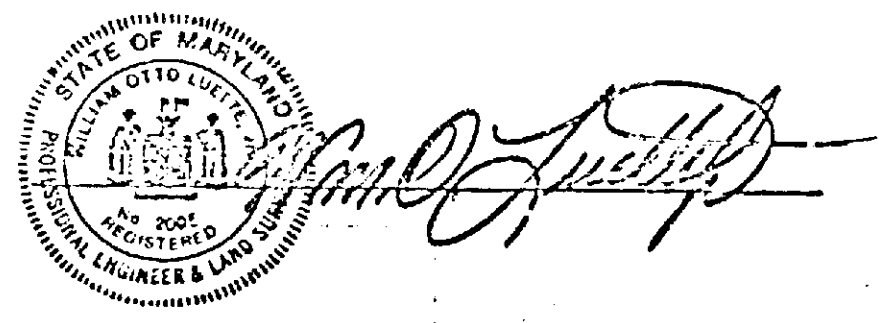
JAMES R. SPAMER & ASSOCIATES  
PROFESSIONAL ENGINEERS & LAND SURVEYORS  
8017 YORK ROAD - TOWSON, MD. 21204  
BY W.O.L. Description for Zoning Purposes  
DATE 2/13/81 Area to be Reclassified to B.R. Zone  
PINKNER PROPERTY - 11317 YORK ROAD - 21030  
SHEET 1 OF 1  
FILE \_\_\_\_\_

Beginning on the east side of York Road (60 feet wide) at the distance of 87.5 feet northerly from the Fourteen Mile Stone and approximately 820 feet north of the centerline of Ashland Rd. thence leaving York Road,

1. North 78° East 423 feet more or less to a point 200 feet westerly, measured at a right angle from the westerly outline of the Baltimore City Loch Raven Reservoir Property, thence northerly parallel to the Loch Raven Reservoir Property
2. North 4° East 694 feet more or less to intersect the northerly outline of the whole tract, thence binding thereon
3. North 89° 22' West 605 feet more or less to the east side of York Road, thence binding thereon,
4. South 30° 15' West 140 feet,
5. South 7° 15' East 180 feet and
6. South 12° 05' East 580.25 feet to the place of beginning

Containing 8.85 acres of land more or less.

Saving and excepting therefrom all that land zoned B.R. as shown on Baltimore County Comprehensive Zoning Maps N.W. 18-19-B. Containing 4.75 acres more or less.



RECEIVED

MAR 23 1981

TERM #13

OFFICE COPY

JAMES R. SPAMER & ASSOCIATES  
PROFESSIONAL ENGINEERS & LAND SURVEYORS  
8017 YORK ROAD - TOWSON, MD. 21204  
BY W.O.L. Description for Zoning Purposes  
DATE 2/13/81 Area to be Reclassified to B.R. Zone  
PINKNER PROPERTY - 11317 YORK ROAD - 21030  
SHEET 1 OF 1  
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Containing 8.85 acres of land more or less.

Saving and excepting therefrom all that land zoned B.R. as shown on Baltimore County Comprehensive Zoning Maps N.W. 18-19-B. Containing 4.75 acres more or less.



OFFICE COPY

#### UNREPORTED IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1381

September Term, 1982

#7-32 73

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

v.

LAWRENCE D. PINKNER, ET AL

Moylan  
Bishop  
Garrity,

JJ.

PER CURIAM

Filed: May 2, 1983

Rec'd 5:38 PM  
1:15 PM

-3-

Based on an evaluation of maps contained in the Baltimore County Soil Survey, this property drains to a drainage-way that flows directly into Western Run at a point just upstream from where Western Run flows into the headwaters of the Loch Raven Reservoir. Hence, it is important from a water quality standpoint to maintain the R.C. 4 zoning of the subject property."

We have carefully reviewed the entire transcript of the hearing before the Board. In addition, we have also considered photographs and plats admitted as evidence before the Board and not included in the record extract. We bring to the attention of the parties, especially the appellant, that it is difficult to comprehend a case of this kind by simply reading testimony when that testimony refers frequently to exhibits not included in the record. Maryland Rule 1026.

The testimony produced by the appellees that they could not sell their property because of the small size and the topography of that portion classified in the B.R. zone was contradicted by the testimony of appellant's witnesses. Paul Solomon, an environmental planner, in addition to his testimony about the environment, testified that the topography was not "violent" as alleged by the appellees, but rather that it was "rolling". Further, he stated that the site could be regraded without undue difficulty and that one-tenth of the R.C. 4 land could be used for a parking facility ancillary to the B.R. zone, a factor not considered by appellees' expert.

James Hoswell, a County Planner, testified to the fact that the property south of the subject property was satisfactorily developed for gasoline service station and tire and automobile service uses.

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upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. *Bonnie View Club v. Glass*, 242 Md. 46, 52-53, 217 A.2d 647, 651 (1966); *Jobar Corp. v. Rodgers Forge Community Ass'n*, 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 612, 615, 617-18, 620-21 (1964); *Overton v. County Commissioners*, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); see *Rohde v. County Board of Appeals*, 234 Md. 259, 267-68, 199 A.2d 216, 218-19 (1964). Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect. As the Court of Appeals said in *Rockville v. Stone*, 271 Md. 655, 662, 319 A.2d 536, 541 (1974):

"On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning." (Citations omitted).

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning. *Bonnie View Club, supra*, at 242 Md. 48-49, 52, 217 A.2d 649, 651

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In *Jobar v. Rodgers Forge*

226 Md. 106, 120 (1964) the Court succinctly pointed out:

"It is only where there is no room for reasonable debate or where the record is devoid of substantial, supporting facts that the courts are justified in reversing a decision of the Board or holding its actions arbitrary or capricious."

Appellees rely strongly on *Bonnie View Club v. Glass*, 242 Md. 46 (1966), *Overton v. County Commissioners*, 225 Md. 212 (1961) (both cited in *Boyce, supra*), and *Kracke v. Weinberg*, 197 Md. 339 (1951).

In *Bonnie View* Judge Prescott summarized the basis for the Court's holding when he wrote:

"The extraordinary situation existing in 1957 (the time of comprehensive zoning or rezoning) caused by the generally unknown mine shafts and subsurface rock formations, when coupled with the topography making the property unusually unfit for single-family residential development, render that conclusion such that reasoning minds could reasonably have reached the result the agency reached upon a fair consideration of the fact picture pointed by the entire record. *Board v. Oak Hill Farms*, 232 Md. 274. When this occurs, our only course is to affirm. Cf. *A. W. Dill, et al v. The Jobar Corporation*, 242 Md. 16, *id.* at 52-53."

In addition, the only rebuttal testimony in that case was limited to that of an adjoining property owner and the president of the appellant club. The property owner opposed the rezoning because he believed that it would decrease the value of his property, cause traffic



sharp fall from York Road, appellees claim that the size of their B.R. zoned lot will be reduced to about 200 feet, thereby reducing the acreage available for development to 3.02 acres. In summary, we have an 11.95 acre tract, with 4.75 acres zoned B.R., of which, after subtracting road widening and slopes, 3.02 acres may be developed.

In 1975 the County Council established the new R.C. 4 zone to provide protection for rural, agricultural and environmentally sensitive areas, including the important watersheds encompassing the reservoirs servicing the metropolitan Baltimore area. It was during the 1976 comprehensive zoning that the R.C. 4 zone was first implemented. During the 1980 comprehensive zoning process appellees sought to extend the B.R. zoning into the R.C. 4 zone. The County Council denied the extension and retained the B.R. classification despite the Planning Board's recommended R.O. (Residential-Office) zoning.

The Planning Board recommended against the granting of the current petition because:

"The subject property is located approximately 1,500 feet from Western Run just upstream from where Western Run flows into Loch Raven Reservoir. In past years, a significant amount of development has taken place along the western fringe of this metropolitan water supply reservoir. It is, therefore, of critical importance that zoning changes not be granted in this area that would permit additional intensive use of the land and the concomitant problems related to the quality of our water supply.

to be the best feasible use. Kracke v. Weinberg, 197 Md. 339, 79 A.2d 387 (1951). The Council may have determined, from all of the evidence before it, that the reclassification would bear a substantial relationship to the public health, safety and general welfare, and would be more in harmony with the comprehensive zoning plan than the original classification. Offutt v. Bd. of Zoning Appeals, 204 Md. 511, 105 A.2d 219 (1954).

In any event, the evidence compels the conclusion that the validity of the action of the District Council is at least reasonably and fairly debatable. In such a case the courts cannot, even if they would, overturn that action by substituting their judgment for that of the legislative agency. Reese v. Mandel, 224 Md. 121, 167 A.2d 111 (1961).

In Kracke Chief Judge Marbury, after relating the history and describing the extreme topography of the subject property, summarized the testimony:

"One expert witness who was called by the appellant, stated that the streams could be enclosed in box covers which could be incorporated under newly designed streets giving access to the property, and it could be leveled off, but he testified as to the very unsatisfactory nature of the present fill. All other expert witnesses testified that to use the property for residential purposes, a street would

1. In Prince George's and Montgomery Counties, the County Councils are designated District Councils for zoning and planning purposes under the Regional District Act.

2. This case was heard below on a Bill of Complaint filed by the property owners, (Weinberg) for a declaratory decree that a zoning ordinance reclassifying their commercial-industrial property to residential was invalid. The appeal was from the Circuit Court of Baltimore City's decree in favor of the property owner.

There was no testimony that these properties were any different in their topography--especially in their fall away from York Road--than the appellees' property. It is clear from the foregoing that the question of confiscation was at least fairly debatable since the appellees did not show that they had been deprived of all reasonable use of their property, and that they cannot use it for any of the permitted uses in the existing zone. Stratakis v. Beauchamp, 268 Md. 643, 654 (1973).

The basic question raised in this case is whether the Baltimore County Council committed basic and actual error or mistake when it adopted the 1976 and 1980 Comprehensive Zoning Maps whereby part of the appellees' property was downgraded from the B.R. classification to the new (1976) R.C. 4 classification. In Boyce v. Sembly, 25 Md. App. 43 (1975), Judge Davidson, for this Court, comprehensively set out the basis for our review of the evidence upon which the Board based its decision:

"... in order to grant the requested reclassification, the Board needed strong and substantial probative evidence that there was 'mistake' or 'error' in the comprehensive zoning.... In order to assess the evidence before the Board, it is necessary to understand the inherent nature of the terms 'mistake' or 'error' as they are used in zoning law. A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied

"... insufficient to make the question of 'error' or 'mistake' fairly debatable for two reasons. First, because the conclusion that the subject property was unsuitable for residential development was not supported by adequate reasons or facts, it was entitled to little if any probative value. It was not sufficiently strong and substantial to overcome the presumption of validity of the comprehensive zoning. Secondly, there was no evidence to show that at the time of the comprehensive zoning the Council was unaware of the readily visible physical characteristics and location of the subject property and failed, in fact, to take them into account. Indeed, the existence of easements for public sanitary sewers supports an inference that the Council was, in fact, aware of the physical characteristics of the subject property. Thus, there was no evidence to show that the initial premises of the Council with respect to the subject property were incorrect and that consequently the classification assigned at the time of the comprehensive rezoning was improper." 25 Md. App. at 55.

The record in the case sub judice strongly supports the conclusion that there was nothing that appellees brought before the Board that they had not brought to the attention of the Council during its consideration of the 1980 Comprehensive Zoning Map.

Finally, we adopt the Board's interpretation of Section 1A03.2 (Bill Nos. 98-75; 178-79):

(mineshaft and subsurface rock formation); by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, Overton, supra at 225 Md. 216-17, 170 A.2d 174-75 (topography); or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning, Jobar Corp., supra, at 236 Md. 116-17, 202 A. 2d 617-18 (need for apartments). See Rohde, supra, at 234 Md. 267-68, 199 A.2d 221. Because facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'

Moreover, in reviewing the evidence before the Board, it must also be noted that the opinion or conclusion of an expert or lay witness is of no greater probative value than that warranted by the soundness of his underlying reasons or facts. Surkovich v. Doub, 258 Md. 263, 272, 265 A.2d 447, 451 (1970); Anderson v. Sawyer, 23 Md. App. 612, 618, 377 A.2d 716, 720. The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. Stratakis, supra, at 268 Md. 655, 304 A.2d 250; Concilio v. County Board of Appeals of Baltimore County, 23 Md. App. 358, 371-72, 328 A.2d 55, 62 (1974) ...." Id. at 50-53.

5. The site virtually drains into one small tributary of Western Run which flows directly into Western Run approximately 1,500 feet prior to where Western Run drains into Loch Raven Reservoir;
6. If the site were developed as intensely as the appellees wish to develop it, there would be erosion of the small stream and the introduction of new pollutants;
7. Developments that individually may have little affect on the watershed, may, in the aggregate, have a significant adverse affect, and
8. A reclassification of this property to that requested by the appellees would cause a much higher risk of pollution because of the uses that would be permitted under the new classification.

Based on the foregoing, we hold that the evidence before the Board made the question of error or mistake in the comprehensive rezoning at least fairly debatable and, therefore, the Circuit Court, in reversing the Board erroneously substituted its judgment for that of the Board. Boyce, supra; Overton, supra.

JUDGMENT REVERSED.

COSTS TO BE PAID BY APPELLEES.

congestion and overcrowd the schools. Also, he doubted that the main portion of the mineshafts were located on the subject property. The president of the appellant club opposed the rezoning "principally on the ground of increased traffic on Smith Avenue." The evidence appeared to be sufficient to rebut those objections.

In Overton the technical staff of the Planning Board actually recommended the change from the original zoning because "... due to the limited time allotted for the preparation of the zoning map for this area, no consideration was given to what type of residential development should be proposed for the subject property." Id. 211. Two hundred forty six persons living in the area signed a petition objecting to the rezoning for apartments because it would not have been in keeping with the character of the area, because there was no change to justify the rezoning, and because the public schools would be overcrowded and traffic hazards would be increased. All of the expert testimony, including the Planning Board technicians, supported the reclassification. As Judge Sybert summarized for the Court:

"It is obvious in the instant case that there was ample evidence before the legislative body from which it could find mistake in the original comprehensive zoning. The Council could have given weight to the testimony of the real estate experts that difficulties of terrain and drainage made the property unsuitable for detached dwellings and that low density apartments appeared

# BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

April 29, 1981

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

cc  
Nicholas B. Comodoro  
Chairman

MEMBERS  
Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission

Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

John B. Howard, Esquire  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21204

Re: Item No. 15 (Cycle 1 - April-October, 1981)  
Petitioner: Lawrence D. Pinkner,  
M.D., et al  
Reclassification Petition

Dear Mr. Howard:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing within the 1st 1980-1984 zoning cycle.

The petition has been reviewed by the Zoning Office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee.

The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office before May 29, 1981. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

The subject of this petition is part of an overall tract of land zoned B.R. and R.C.4 and located on the southeast corner of the proposed Shawn Road extension and York Road in the 6th Election District. At the present time the site is zoned B.R. for a depth of 500 feet east from and parallel to the centerline of York Road with the remainder in the R.C.4 classification. Because of your clients' proposal to rezone a portion of this land to B.R. zoning, this reclassification request is required.



have to be built, a foundation could not be gotten for the houses, the streams would have to be taken care of with heavy pipes, and any builder would run into such prohibitive costs that he would go bankrupt on the proposition. There was commercial property to the east, and on the property in question there had been an old 20-foot-deep ice pond. No part of the land, except the short frontage on Wilkens Avenue at Wilmington, would be useful for residential purposes. The highest utility of the land was for industrial use, and it has not a very high utility for that because of its shape and contour. The chancellor made a personal observation of the property in the company of counsel, and he said that he was convinced that it was not practical from a financial point of view to use the property for residential purposes, that there was no change in conditions since it was zoned commercial that warranted its rezoning, and there was no showing of any public good that demanded its reclassification. It seems to be quite clear from all of this that the property has never been used for residential purposes, that it cannot now be used for residential purposes without a prohibitive expenditure of money, that the only reason for reclassifying it as residential was to protect the property of those who lived to the south and east of it in what is known as Wilhelm Park, and that the residents of Wilhelm Park had this done so as to create a barrier between their properties and the railroad and the Blaustein property and Wilkens Avenue." 339 Md. at 345-46.

It is clear that the evidence in the record before us is not of the same genre as the evidence in Bonnie View, Overton and Kracke. It is much more akin to that in Boyce, supra, which Judge Davidson summarized for us as:

"The Board interprets the 200 foot requirement in Bill 178-79 as a minimum standard only and not as a threshold requirement which demands reclassification if found. The Board is convinced the Council intended to exclude reclassifications within 200 feet and leave to this Board's discretion to grant if error is shown on R.C. 4 zoned land beyond the 200 feet. In the present case the Board finds no error in the present line."

The appellees have complied with Section 1A03.2 of the Baltimore County Zoning Regulations. As they point out, they do not seek to rezone the land within two hundred feet of the watershed property. Appellees also make the point that the Hunt Valley Mall is already in existence to the northeast of the property; north of the property extending to Western Run is property zoned M.L.R. and finally to the west is the Greater Baltimore Industrial Center, which contains a large building occupied by the Chesapeake and Potomac Telephone Company. Paul Solomon, Baltimore County Environmental Planner, however, brought out the following facts in his testimony:

1. The property borders on the western part of the Loch Raven Watershed;
2. Loch Raven Dam has experienced phosphate pollution;
3. Industrial development increases damaging run-off dramatically;
4. The degree of intense development must be limited in critical watershed areas, of which this is one;

Item No. 1  
Lawrence D. Pinkner, et al  
Page Two  
April 29, 1981

As indicated in my conversation with you prior to the submission of this request, all requirements of Section 1A03.2 of the zoning regulations must be satisfied before a reclassification from R.C. 4 to any other zone can be granted. It was your decision that the report required as a result of this section would be submitted at a later date. In addition, when requesting a reclassification of land zoned R.C. 4 to any zone other than R.C., Section 1A03.3 indicates that public sewer and water must be available to its site or become available within two years from the date the petition is submitted. Since water exists along the frontage of this site and public sewer exists on York Road at its intersection with Schilling Circle Road, it is the position of this office that this requirement is satisfied.

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-3591. Notice of the specific hearing date, which will be between September and December of 1981, will be forwarded to you in the future.

Very truly yours,

NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC/sf

Enclosures

cc: James S. Spamer & Associates  
P Box 9804  
Towson, Maryland 21204

BALTIMORE COUNTY  
DEPARTMENT OF PUBLIC WORKS  
TOWSON, MARYLAND 21204

HARRY I. DIEHL, P.E.  
CHIEF

April 1, 1981

Mr. Walter A. Reiter, Jr.  
Chairman, Board of Appeals  
Court House  
Towson, Maryland 21204

Re: Item #13 (Cycle I - April-October 1981)  
Property Owner: Lawrence D. Pinkner, M.D.  
E/S York Road 820' N. of Ashland Road  
Existing Zoning: R.C. 4  
Proposed Zoning: BR  
Acres: 4.10 District: 8th

Dear Mr. Reiter:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

The comments which were supplied in conjunction with the Zoning Advisory Committee review of this property for Item #15 Zoning Cycle I (April-October 1977) are referred to for your consideration.

This property is located in the 3rd Councilmanic District, not the 4th as indicated on the submitted plan.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item #13 Zoning Cycle I (April-October 1981).

Very truly yours,

ROBERT A. MORTON, P.E., Chief  
Bureau of Public Services

RAM:EAM:FWR:ss

cc: Jack Wimbley

V-NE Key Sheet  
72 & 73 NW 6 & 7 Pos. Sheets  
NW 18 & 19 B Topo  
42 Tax Map

Attachment

April 29, 1977

Mr. S. Eric DiNanna  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item #15 (Cycle I April-October 1977)  
Property Owner: Robert Pinkner, et al  
E/S of York Rd. 87.5' N. of Ashland Rd.  
Existing Zoning: R.C. 4  
Proposed Zoning: B.R.  
District: 8th No. of Acres: 11.65

Dear Mr. DiNanna:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

York Road (Rd. 45) is a State Road; therefore, all improvements, intersections, entrances and drainage requirements as they affect the road come under the jurisdiction of the Maryland State Highway Administration. Any utility construction within the State Road right-of-way will be subject to the standards, specifications and approval of the State in addition to those of Baltimore County.

Ashland Road, an existing State Road (Md. 145), is proposed to be relocated and extended through this property, a State Highway Administration project, as a four lane divided highway.

Sediment Control:

Development of this property through striping, grading and stabilization would result in a sediment pollution problem, damaging public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the striping of top soil.

Storm Drains:

In accordance with the drainage policy, the Petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

Item #15 (Cycle I April-October 1977)  
Property Owner: Robert Pinkner, et al  
Page 2  
April 29, 1977

Storm Drains: (Cont'd)

Drainage and utility easements will be required through this property.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisance or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Water:

Public water main exists in York Road.

Sanitary Sewers:

Public sanitary sewerage is not available to serve this property. The submitted plan indicates existing sanitary sewerage approximately 800'-1000' directly from the southeast corner of this site. This sanitary sewerage is the 36-inch Western Run Interceptor (Drawing 173-0003, File 1), on the opposite (east) side of Western Run. A public sanitary sewer extension would be required to serve this property. Off-site rights-of-way will be required for construction of a public sanitary sewer extension to serve this and other properties. This property is tributary to Western Run and Loch Raven Reservoir. Sewage from the area is directed to the Jones Falls Sanitary Sewer System, subject to State Health Department regulations.

Very truly yours,  
*Edward W. Tucker*

EDWARD W. TUCKER, P.E.  
Acting Chief, Bureau of Engineering

DWT:EAM:FWR:ss

cc: J. Trenner

V-NE Key Sheet  
72 & 73 NW 6 & 7 Pos. Sheets  
NW 18 & 19 B Topo  
42 Tax Map



Maryland Department of Transportation

State Highway Administration

James J. O'Donnell  
Secretary  
M. S. Calverley  
Administrator

March 27, 1981

Mr. Walter Reiter  
Chairman Board of Appeals  
County Office Bldg.  
Towson Md. 21204

Att: N. Commodari

Re: Cycle I-1981  
Z.A.C. meeting 3/16/81  
Owner: Lawrence D. Pinkner  
M.D.  
Item #13  
Location: E/S York Road  
(Route 45) 820' N. of  
Ashland Road  
Existing Zoning: RC. 4  
Proposed Zoning: BR  
Acres: 4.10  
District: 8th

Dear Mr. Reiter,

Any direct access to York Road would involve improvement of the highway frontage with widening, paving, curbing and sidewalks.

The proposed right of way on York Road will be 120'.

A check of the State Highway Needs Study for the proposed extension of Shawan Road will require a 80' R/W.

A site flare must be provided @ the northeast corner of York Road and Shawan Road of 50' from the proposed Right of Way.

Very truly yours,

Charles Lee, Chief  
Bureau of Engr. Access Permits

by: George Wittman

RECEIVED  
BALTIMORE COUNTY  
MAY 1 11 53 PM '81  
BY: [initials]  
OFFICE OF THE  
COUNTY ENGINEER

My telephone number is 301-659-1350

P.O. Box 717 / 300 West Preston Street, Baltimore, Maryland 21203

Baltimore County  
Department of Public Engineering  
TOWSON, MARYLAND 21204  
(301) 494-5550

STEPHENE COLLINS  
DIRECTOR

March 30, 1981

Mr. Walter A. Reiter, Jr.  
Chairman, Board of Appeals  
Office of Law  
Courthouse  
Towson, Maryland 21204

Item #13 March 16, 1981  
Property Owner: Lawrence D. Pinkner, M.D.  
Location: E/S York Road 820' N. of Ashland Road  
Existing Zoning: R.C. 4  
Proposed Zoning: BR  
Acres: 4.10  
District: 8th

Dear Mr. Reiter:

The existing RC-4 Zoning can be expected to generate about 12 trips per day and the proposed BR zoning will generate about 2,000 trips per day.

Very truly yours,

Michael S. Flinnigan  
Engineer Associate II

MSF/bza



April 6, 1981

Mr. Walter Reiter, Chairman  
Board of Appeals  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. Reiter:

Comments on Cycle I, #13, Zoning Advisory Committee Meeting of  
March 16, 1981, are as follows:

Property Owner: Lawrence D. Pinkner, M.D.  
Location: E/S York Road 820' N. of Ashland Road  
Existing Zoning: R.C. 4  
Proposed Zoning: RR  
Acres: 4.10  
District: 8th

The proposed development must be served by both metropolitan water  
and sewer.

The sewage disposal system that serves the dwelling located on the  
property is failing; discharging sewage onto the ground surface. This condi-  
tion must be corrected immediately.

Prior to approval of Tentative Plans for any proposed subdivision  
of this property; a Hydrogeological Study and Environmental Effects Report  
must be submitted to this office for review and approval.

The zoning plan as submitted, does not contain sufficient informa-  
tion; therefore, the Baltimore County Department of Health cannot make com-  
plete comments.

Very truly yours,

*Jon J. Rehrast*  
Jon J. Rehrast, Director  
BUREAU OF ENVIRONMENTAL SERVICES

LJR/alr/JWP



BALTIMORE COUNTY  
FIRE DEPARTMENT  
TOWSON, MARYLAND 21204  
825-7310

PAUL H. REINCKE  
CHIEF

March 19, 1981

Mr. William Hammond cc: Walter Reiter  
Zoning Commissioner Chairman of Board of Appeals  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: Nick Commodari, Chairman  
Zoning Plans Advisory Committee

RE: Property Owner: Lawrence D. Pinkner, M.D.

Location: E/S York Road 820' N. of Ashland Road

Item No.: 13 Zoning Agenda Meeting of March 16, 1981

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this  
Bureau and the comments below marked with an "X" are applicable and required  
to be corrected or incorporated into the final plans for the property.

(XX) 1. Fire hydrants for the referenced property are required and shall be  
located at intervals or 200 feet along an approved road in  
accordance with Baltimore County Standards as published by the  
Department of Public Works. Fire hydrants at 300 foot intervals

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at \_\_\_\_\_

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the  
Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall  
comply with all applicable requirements of the National Fire Protection  
Association Standard No. 101 "Life Safety Code", 1976 Edition prior  
to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: *Paul H. Reincke* Noted and Approved: *Heather M. Carroll*  
Planning Group Fire Prevention Bureau  
Special Inspection Division

/mb

## BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

Mr. Walter Reiter  
Board of Appeals Chairman  
Date: March 27, 1981  
TO: Mr. Charles E. Burnham  
Permits and Licenses  
FROM: Cycle I - 1981  
SUBJECT: RE: Cycle Zoning March 24, 1981

PROPERTY OWNER: Lawrence D. Pinkner, M.D.  
LOCATION: E/S York Road 820' N. of Ashland Road  
EXISTING ZONING: R.C. 4  
PROPOSED ZONING: RR  
ACRES: 4.10  
DISTRICT: 8th

ITEM NO. 13

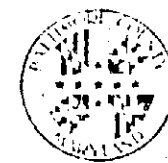
Before any improvements are made the applicant shall acquire all  
necessary permits, sufficient plans and data shall be provided the permit  
office to provide for processing the permit.

NOTE: All comments are based on data provided on site plan and  
data provided by the Zoning Advisory Committee.  
Comments in many cases cannot be more specific or advisory  
due to the listed information.

*Charles E. Burnham*  
Charles E. Burnham  
Plans Review Chief

CEB:rrj

CC: Nick Commodari



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

November 3, 1981

John B. Howard, Esquire  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21204

RE: Petition for Re-classification  
E/S York Rd., 820' N of centerline of Ashland Rd.  
Lawrence D. Pinkner, et al - Petitioners  
Case #R-82-73 Cycle 1 - Item 13

Dear Mr. Howard:

This is to advise that \$51.31 is due for the 2nd full page add of  
the cycle 1 billing. You have already been billed for the 1st full page add as well  
as for the individual posting and advertising of this property. All bills must be paid  
before an order is issued. This is your final bill.

Please make check payable to Baltimore County, Maryland, and remit to  
Karen Riegel, Room 113, County Office Building, Towson, Maryland, 21204, as  
soon as possible.

Very truly yours,

*William E. Hammond*  
William E. Hammond  
Zoning Commissioner

WEH:klr

### LAW OFFICES

COOK, HOWARD, DOWNES & TRACY

A PROFESSIONAL ASSOCIATION  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

JAMES D.C. DOWNES  
(1906-1979)

823-4111  
AREA CODE 301

August 25, 1981

Mrs. Edith Eisenhart  
Baltimore County Board of Appeals  
Room 219 Court House  
Towson, Maryland 21204

Re: Item No. 13 - Cycle No. 1  
Petitioner - Lawrence D. Pinkner,  
M.D., et al  
Reclassification Petition

Dear Mrs. Eisenhart:

This will confirm that we are not requesting a  
continuance and will be prepared to proceed on the assigned  
hearing date of Wednesday, October 28 at 10:00 a.m.

Kind regards.

Sincerely,

*John B. Howard*  
John B. Howard

JBH:ecd  
cc: Lawrence D. Pinkner, M.D.  
cc: Mr. Robert A. Pinkner  
cc: Mr. James S. Spamer

RECEIVED  
BALTIMORE COUNTY  
AUG 27 9 11 AM '81  
COUNTY CLERK  
BY

### LAW OFFICES

COOK, HOWARD, DOWNES & TRACY

A PROFESSIONAL ASSOCIATION  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

JAMES D.C. DOWNES  
(1906-1979)

823-4111  
AREA CODE 301

March 2, 1981

### HAND DELIVERED

Baltimore County Board of Appeals  
Room 219 Court House  
Towson, Maryland 21204

Re: Pinkner Property S/E Side York Road  
At Shawan Road, Eighth Election  
District, Baltimore County, Maryland

Dear Lady and Gentlemen:

Enclosed please find the following:

- Three completed typewritten petition forms signed  
by the Petitioners and myself as counsel.
- Seven copies of the Engineer's property description.
- Three copies of a Memorandum in Support of the  
Reclassification.
- Two each of the official 1" = 200' and 1" = 1,000'  
scale zoning maps with the property outlines.
- Twelve copies of a site plan with appropriate  
information.

You will also find enclosed my check in the amount of  
\$50.00 in payment of the filing fee.

Thank you for your assistance.

Kind regards.

Sincerely,  
*John B. Howard*  
John B. Howard

JBH:ecd  
Enclosures  
cc: Lawrence D. Pinkner, M.D. (with enclosures)  
cc: Mr. Robert A. Pinkner (with enclosures)  
cc: Leslie M. Pittler, Esquire (with enclosures)

## BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 23, 1981

Mr. Walter Reiter  
Chairman, Board of Appeals  
Baltimore County Office Building  
1111 West Chesapeake Avenue  
Towson, Maryland 21204

Zoning Cycle #1 March 16, 1981

RE: Item No: 13  
Property Owner: Lawrence D. Pinkner, M.D.  
Location: E/S York Rd. 820' N. of Ashland Rd.  
Present Zoning: R.C. 4  
Proposed Zoning: RR

### School Situation

School	Enrollment	Capacity	Over/Under
--------	------------	----------	------------

Comment: Acreage too small to have an effect on student population.

### Student Yield With:

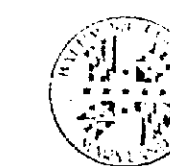
Existing Zoning	And	Proposed Zoning
--------------------	-----	--------------------

Elementary  
Junior High  
Senior High

Very truly yours,

*William E. Hammond*  
William E. Hammond, Assistant  
Department of Planning

WNP/bp



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

June 30, 1981

John B. Howard, Esquire  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21204

RE: Item No 13 - Cycle No 1  
Petitioner - Lawrence D. Pinkner,  
M.D., et al  
Reclassification Petition

Dear Mr. Howard:

This is to advise you that \$77.15 is due for the first advertising  
of the above property. Two additional bills will be forwarded to you in the near future.  
All bills must be paid before an order is issued.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel,  
Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

*William E. Hammond*  
William E. Hammond  
Zoning Commissioner

WEH:mch



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3333

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

October 21, 1981

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: Petition for Re-classification  
E/s York Rd., 820' N of centerline of Ashland Rd.  
Lawrence D. Pinkner, et al - Petitioners  
Case #R-82-73 Cycle 1--Item 13

Dear Mr. Howard:

This is to advise you that \$62.15 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel, Room 113, County Office Building, Towson, Maryland 21204 before the hearing.

Very truly yours,  
WILLIAM E. HAMMOND  
Zoning Commissioner

WEH:klr

# PETITION FOR RE-CLASSIFICATION

8th DISTRICT

ZONING: Petition for Re-classification  
LOCATION: East side of York Road, 820 ft. North of Centerline of Ashland Road  
DATE & TIME: Wednesday, October 28, 1981 at 10:00 A.M.  
PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter will hold a public hearing:

Present Zoning: R.C.4  
Proposed Zoning: B.R.

All that parcel of land in the Eighth District of Baltimore County

Being the property of Lawrence D. Pinkner, et al, as shown on plat plan filed with the Zoning Department.

Hearing Date: Wednesday, October 28, 1981 at 10:00 A.M.  
Public Hearing: Room 218, Courthouse, Towson, Maryland

BY ORDER OF  
WILLIAM T. HACKETT, CHAIRMAN  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

LAW OFFICES  
COOK, HOWARD, DOWNES & TRACY  
A PROFESSIONAL ASSOCIATION  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES  
(1906-1979)  
873 4111  
AREA CODE 301

October 29, 1981

HAND DELIVERED

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 102612

DATE 11/9/81 ACCOUNT 01-662

AMOUNT \$51.31

RECEIVED FROM John B. Howard, Esquire  
FOR 2nd full page add for Case #R-82-73 (Pinkner)

Re-classification  
820' N of Centerline  
Road  
inkner, et al - Petitioners  
Cycle 1 -- Item 13

n the amount of  
ting in the above

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 101695

DATE 11/3/81 ACCOUNT 01-662

AMOUNT \$62.15

RECEIVED FROM John B. Howard, Esquire  
FOR Posting & Advertising of Case #R-82-73 (Pinkner)

VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES  
COOK, HOWARD, DOWNES & TRACY  
A PROFESSIONAL ASSOCIATION  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES  
(1906-1979)  
873 4111  
AREA CODE 301

November 12, 1981

Ms. Karen Riegel  
Room 113  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Petition for Reclassification  
E/S York Road, 820' N of Centerline  
of Ashland Road  
Lawrence D. Pinkner, et al - Petitioners  
Case #R-82-73 Cycle 1 -- Item 13

Dear Ms. Riegel:

Enclosed please find my check in the amount of \$77.15 to cover the final cost for advertizing and posting.

Kind regards.

Sincerely,  
John B. Howard

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 102635

DATE 11/18/81 ACCOUNT 01-662

AMOUNT \$77.15

RECEIVED FROM Cook, Howard, Downes & Tracy  
FOR 1st full page add - R-82-73 - Pinkner

VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES  
COOK, HOWARD, DOWNES & TRACY  
A PROFESSIONAL ASSOCIATION  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES  
(1906-1979)  
873 4111  
AREA CODE 301

November 12, 1981

HAND DELIVERED

Mr. John V. Murphy  
Mr. John A. Miller  
Mrs. Patricia Phipps  
Baltimore County Board of Appeals  
Room 200 Court House  
Towson, Maryland 21204

Re: Petition for Reclassification  
E/s York Road, 820' N of centerline  
of Ashland Road  
Lawrence D. Pinkner, et al - Petitioners  
Case #R-82-73 Cycle 1 - Item 13

Dear Lady and Gentlemen:

Enclosed herewith please find a Memorandum in Support of the Petition for Reclassification in the above captioned matter.

Thank you very much for your consideration of this matter.

Kind regards.

Sincerely,

John B. Howard

JBH:ecd  
Enclosure  
cc: Peter Max Zimmerman, Esquire

494-3180

## County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204

January 6, 1982

John W. Hession, III, Esq.  
People's Counsel for Baltimore County  
Court House  
Towson, Md. 21204

Dear Mr. Hession: Re: Case No. R-82-73  
Lawrence D. Pinkner, M.D., et al

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Encl.  
cc: W. E. Hammond  
J. E. Dyer  
N. E. Gerber  
J. Hoswell  
Board of Education

January 6, 1982

BILLED TO: John B. Howard, Esq.  
210 Allegheny Ave.  
Towson, Md. 21204

Cost of certified documents filed  
in Case No. R-82-73 . . . . . \$17.00

Lawrence D. Pinkner, M.D.  
and Robert A. Pinkner  
E/s York Rd., 820' N of Ashland Rd.  
8th District

MAKE CHECKS PAYABLE TO: Baltimore County, Maryland

REMIT TO: County Board of Appeals  
Rm. 200, Court House  
Towson, Md. 21204

494-3180

## County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204

January 6, 1982

John B. Howard, Esq.  
210 Allegheny Avenue  
Towson, Md. 21204

Dear Mr. Howard: Re: Case No. R-82-73  
Lawrence D. Pinkner, M.D., et al

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

June Holmen, Secretary

Encls.  
cc: Lawrence D. Pinkner, M.D.  
and Robert A. Pinkner



IN THE MATTER OF THE PETITION OF  
LAWRENCE D. PINKNER, MD AND ROBERT  
A. PINKNER, PROPERTY OWNERS, FOR  
RECLASSIFICATION FROM R.C.-4 TO  
B.R. OF APPROXIMATELY 4.10 ACRES  
LOCATED ON THE EAST SIDE OF YORK  
ROAD, OPPOSITE SHAWAN ROAD,  
COCKEYSVILLE, EIGHTH ELECTION  
DISTRICT, BALTIMORE COUNTY,  
MARYLAND

\* BEFORE THE COUNTY  
\* BOARD OF APPEALS OF  
\* BALTIMORE COUNTY  
\*  
\*  
\*

MEMORANDUM IN SUPPORT OF PETITION FOR RECLASSIFICATION

Lawrence D. and Robert A. Pinkner are the owners of approximately 11.95 acres located on the east side of York Road, opposite Shawan Road, in Cockeysville.

Prior to the adoption of the 1976 Comprehensive Zoning Map, the subject property was classified in its entirety as Business, Roadside (B.R.). As a result of the adoption of the 1976 Comprehensive Zoning Map, approximately 7.20 acres of the subject property were down-zoned to R.C. 4 leaving the portion of the property fronting on York Road, with a depth of approximately 300 feet, in the B.R. classification.

Subsequent studies conducted on behalf of the property owners established that the State Highway Administration proposed a substantial dedication of York Road for its future widening of York Road and an equally substantial dedication along the northern perimeter of the subject property for the proposed future extension of Shawan Road in an easterly direction. The portion of the B.R. zoned property remaining for utilization would be further narrowed

by topographical constraints, the studies showed. In the final analysis, the property owners were left with a very narrow strip of B.R. zoned property, thus depriving it of any reasonable use.

Since it was obvious that the Council had not taken into consideration the State Highway Administration dedications and the topographical considerations, attempts were undertaken to remedy this error during the first cycle period following the 1976 Map adoption but the Baltimore County Office of Zoning refused to accept the proffered petition for reclassification.

Upon initiation of the studies for the 1980 Comprehensive Zoning Map, the property owners submitted to the Baltimore County Planning Board an appropriate request citing the above circumstances; and during the public hearings conducted by the Baltimore County Council, as well as the informal meetings held by the Councilmen for the district in which the property is located, uncontroverted expert evidence was presented to the effect that the zoning lines were such that the property was deprived of any reasonable use. Without explanation, the Council totally disregarded the engineering and other studies presented by the property owners and compounded the error committed in 1976 by reaffirming the existing zoning lines.

It is respectfully submitted that the subject request to extend the zoning line for inclusion of approximately 4.10 acres, and not for restoration of the B.R. zone for the entire property, takes into consideration the watershed protection elements of the R.C. 4 zone and would permit property owners minimum acreage on

- 2 -

Which a reasonable use of their land could be established.

Respectfully submitted,

*John B. Howard*  
John B. Howard  
Attorney for Petitioners

LAW OFFICES  
COOK, HOWARD, DOWNES & TRACY  
21 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

February 1, 1982

Baltimore County Board of Appeals  
Room 219 Court House  
Towson, Maryland 21204

Re: Lawrence D. Pinkner, M.D.  
and Robert A. Pinkner  
E/s York Road, 820'W of Ashland Road  
8th District

Gentlemen:

Enclosed please find this firm's check in the amount of \$17.00 to cover the cost of certified documents filed in Case No. R-82-73.

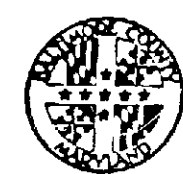
Very truly yours,

*Frank A. Lafalle, Jr.*  
Frank A. Lafalle, Jr.

FAL:ecd  
Enclosure  
cc: Lawrence D. Pinkner, M.D.  
cc: Mr. Robert A. Pinkner

BALTIMORE COUNTY  
FEB 2 11 21 AM '82  
CLERK OF COURT  
B-100-1030

- 3 -



Baltimore County, Maryland

PEOPLE'S COUNSEL  
RM. 223, COURT HOUSE  
TOWSON, MARYLAND 21204

TEL. 494-2188

JOHN W. HESSIAN, III  
People's Counsel  
PETER MAX ZIMMERMAN  
Deputy People's Counsel

June 3, 1982

Ms. Joyce Grimm, Director  
Circuit Court Assignment Office  
Courts Building  
Towson, Maryland 21204

RE: Alida Corporation - Misc. #82-M-4;  
Universal Security Instruments - Misc.  
#82-M-64; and Pinkner - Misc. #82-M-3

Dear Ms. Grimm:

The above cases are set in for hearing, as follows:

Alida - Tuesday, June 29, 1982, 9:30 am.

Universal Security Instruments -  
Tuesday, June 29, 1982, 9:30 am.

Pinkner - Friday, July 9, 1982, 9:30 am.

Unfortunately, I will be on vacation from June 28th until July 9th and, therefore, respectfully request that they be rescheduled to a subsequent date.

Very truly yours,

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel

cc: Carl Berenholtz, Esquire  
Anthony P. Palaios, Esquire  
Richard Ferber, Esquire  
John P. Machen, Esquire  
John B. Howard, Esquire

PMZ:sh

RECEIVED  
BALTIMORE COUNTY  
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CLERK OF COURT  
B-100-1030

RE: Non-Jury-Law- 82-1-3- IN THE MATTER OF LAWRENCE D. PINKNER, M.D. ET AL VS COUNTY BOARD OF APPEALS  
HEARING DATE: Monday, August 16, 1982 9:30 a.m.  
ON THE FOLLOWING: Appeals: 45 Minutes

UPON RECEIPT OF THIS NOTICE, Counsel shall contact *John B. Howard, Esq.* calendar claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including client representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. COVONE. Please direct all inquiries to the attention of Joel Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately.

Joel Adams - 494-2660  
Circuit Assignment Commissioner  
Settlement Court  
Kathy Rabinson - 424-2662  
Master Assignment Clerk  
Medical Records  
TO: John B. Howard, Esq.  
John W. Hessian, III, Esq.  
Peter Max Zimmerman, Esq.  
County Board of Appeals of Baltimore Co.  
ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Boney Avenue  
P.O. Box 8754  
Towson, Maryland 21204-0754  
June 7, 1982

Sandra Sander - 494-2660  
Assignment - Jury - Motions  
Assignment - Non-Jury - Motions  
Assignment Clerk, Trial  
Irene Sumner - 494-2661  
Assignment - Non-Jury - Motions  
Master Recording  
Assignment Clerk, Trial

494-3180

County Board of Appeals

Room 219, Court House  
TOWSON, MARYLAND 21204

January 14, 1983

Mr. Julius A. Romano  
Clerk of the Court of Special Appeals of Maryland  
Annapolis, Maryland 21404

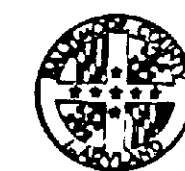
Re: Misc. No. 82-M-3  
Lawrence D. Pinkner, M.D.

Dear Mr. Romano:

Please forward to this office a copy of the opinion in the above entitled case when it is filed by the Court of Special Appeals. We would appreciate it if you would note our request in your file on this case. Thank you.

Very truly yours,

*Edith T. Eisenhart*  
Edith T. Eisenhart, Adm. Secretary



Baltimore County, Maryland

PEOPLE'S COUNSEL  
RM. 223, COURT HOUSE  
TOWSON, MARYLAND 21204

TEL. 494-2188

JOHN W. HESSIAN, III  
People's Counsel  
PETER MAX ZIMMERMAN  
Deputy People's Counsel

November 23, 1982

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: People's Counsel for Baltimore County v.  
Lawrence D. Pinkner, et al., Court of  
Special Appeals No. 1381, September  
Term, 1982

Dear Mr. Howard:

Pursuant to Maryland Rule 1028, we designate the following for inclusion in the record extract:

1. Docket entries.
2. Transcript of hearing October 28, 1981. Exhibits: Joint.
3. Recommended 1980 Comprehensive Zoning Map.
4. Councilmanic Log of Issues.
5. County Council Hearing June 6, 1980.
6. County Council Hearing September 4, 1980.
7. Planning Board Cycle Recommendation.
8. County Board of Appeals Opinion dated December 8, 1981.
9. Petition on Appeal.
10. Opinion of Circuit Court Judge Buchanan dated August 24, 1982.
11. Amended Opinion dated September 24, 1982.

Sincerely yours,  
*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel

PMZ:sh











RE: PETITION FOR RECLASSIFICATION : IN THE  
from R.C. 4 to B.R. : CIRCUIT COURT  
E/S York Road 820' N :  
of Ashland Road : FOR  
8th District :  
Lawrence D. Pinkner, M.D. : BALTIMORE COUNTY  
and Robert A. Pinkner, :  
Petitioners-Appellants : AT LAW  
File No. R-82-73 : Misc. Docket No. 14  
Folio No. 8  
File No. 82-M-3

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING  
COMMISSIONER AND THE BOARD OF APPEALS OF  
BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come John V. Murphy, Patricia Phipps and John A. Miller,  
constituting the County Board of Appeals of Baltimore County, and in answer to the  
Order for Appeal directed against them in this case, herewith return the record of  
proceedings had in the above entitled matter, consisting of the following certified copies  
or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER  
OF BALTIMORE COUNTY

No. R-82-73  
March 2, 1981 Petition of Lawrence D. Pinkner, M.D., and Robert A. Pinkner,  
for a reclassification from an R.C. 4 zone to a B.R. zone.  
October 8, " Certificate of Publication in newspaper - filed  
October 12, " Certificate of Posting of property - filed  
October 28, " At 10:00 a.m. hearing held on petition  
Memorandum in Support of Reclassification  
December 8, " Order of County Board of Appeals denying the reclassification from  
an R.C. 4 zone to a B.R. zone  
January 5, 1982 Order for Appeal filed in Circuit Court for Baltimore County by  
John B. Howard, Esq., Counsel for Petitioners

RE: PETITION FOR RECLASSIFICATION : IN THE CIRCUIT COURT  
FROM R.C. 4 to B.R. ZONE :  
E/S York Road 820' N : FOR BALTIMORE COUNTY  
of Ashland Road :  
8th District : AT LAW  
Lawrence D. Pinkner, M.D., : Misc. Docket No. 14  
et ux, Petitioners : Folio No. 8  
Zoning Case No. R-82-73 : Case No. 82-M-3

ANSWER TO PETITION ON APPEAL

People's Counsel for Baltimore County, Appellee, answers  
as follows:

1. Appellee admits paragraph 1.
2. Appellee denies paragraphs 2-5.
3. In further answer, Appellee states that the decision  
of the County Board of Appeals was reasonable and supported by  
legally competent and substantial evidence.

151  
John W. Hessian, III  
People's Counsel for Baltimore County

151  
Peter Max Zimmerman  
Deputy People's Counsel  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 16th day of February, 1982,  
a copy of the foregoing Answer to Petition on Appeal was mailed to  
John B. Howard, Esquire, Cook, Howard, Downes & Tracy, 210 Allegheny  
Avenue, P. O. Box 5517, Towson, Maryland 21204, Attorneys for  
Appellants.

151  
Peter Max Zimmerman

Lawrence D. Pinkner, M.D.  
and Robert A. Pinkner  
Case No. R-82-73

January 6, 1982 Certificate of Notice sent to all interested parties  
January 14, 1982 Petition to accompany Order for Appeal filed in Circuit Court for  
Baltimore County  
January 29, 1982 Petition for Extension of Time to File Transcript to March 2, 1982  
March 2, 1982 Transcript of testimony filed

People's Counsel Exhibit No. 1A thru 1J - Photos

Joint Exhibit #2 - Comp. Zoning Map, Pg. 23 of 25

- " #3 - County Council logs (2 pages)
- " #4 - Minutes of County Council; 2 pages
- " #5 - County Council hearing, June 6, 1980
- " #6 - Sept. 4, 1981, minutes of hearing
- " #7 - Copy of Item No. 13, Cyclic Book

Petitioners' Exhibit No. 1 - James Spamer - Qualifications

- " " 2 - Pet. Plat, "as is"
- " " 3 - Pet. Plat, "This Application"
- " " 4 - Balto. Cty. Zoning Plans Advisory  
Committee comments
- " " 5 - Sketch showing profiles
- " " 6 - Letter from Spamer to Howard dated  
10/28/81
- " " 7 - J. W. Guckert Qualifications

March 2, 1982 Record of proceedings filed in the Circuit Court for Baltimore County  
Record of proceedings pursuant to which said Order was entered and  
said Board acted are permanent records of the Zoning Department of Baltimore County, as are  
the use district maps, and your respondents respectively suggest that it would be inconvenient  
and inappropriate to file the same in this proceeding, but your respondents will produce any  
and all such rules and regulations, together with the zoning use district maps at the hearing  
on this petition, or whenever directed to do so by this Court.

Respectfully submitted,

June Holmen  
County Board of Appeals of Baltimore County

cc: John B. Howard, Esq.  
John W. Hessian, Esq.

RE: PETITION FOR RECLASSIFICATION \* IN THE CIRCUIT COURT  
from R.C. 4 to B.R. zone \*  
E/S York Road 820' N \* FOR BALTIMORE COUNTY  
of Ashland Road \*  
8th District \* AT LAW  
Lawrence D. Pinkner, M.D., et ux \* Misc. Docket No.  
Petitioners \* Folio No. 8  
Case No.

PETITION

Now comes Lawrence D. Pinkner and Robert A. Pinkner,  
Appellants, by John B. Howard and Cook, Howard, Downes & Tracy,  
their attorneys, pursuant to Maryland Rule B2e, and in support  
of their Order for Appeal says:

1. The Appellants have noted an Appeal from the Order  
of the County Board of Appeals for Baltimore County, dated  
December 8, 1981, which denied a Petition to reclassify an  
approximate 4.10 acre portion of the subject property from a  
R.C. 2 classification to a B.R. classification.
2. That the County Board of Appeals committed error  
by denying the aforementioned Petition because Appellants  
presented overwhelming evidence of (i) mistake and error in the  
Comprehensive Zoning Map, and (ii) that B.R. was the correct  
zoning classification for the subject parcel.
3. The County Board of Appeals erred in that the  
Appellants' evidence clearly established that unless the additional  
B.R. zoning was granted, any reasonable use of the property would  
be prevented.
4. The decision of the County Board of Appeals is  
arbitrary and capricious and against the weight of the evidence.
5. The County Board of Appeals erred by applying an  
incorrect standard to determine whether the original zoning was  
in error.

RE: PETITION FOR RECLASSIFICATION \* IN THE  
from R.C. 4 to B.R. \*  
E/S York Road 820' N \* CIRCUIT COURT  
of Ashland Road \*  
8th District \* FOR BALTIMORE COUNTY  
Lawrence D. Pinkner, M.D. \* AT LAW  
and Robert A. Pinkner \*  
Petitioners-Appellants \* Misc. Docket No. 14  
File No. R-82-73 \* Folio No. 8  
File No. 82-M-3 \*  
\* \* \* \*

ORDER

Upon the foregoing Motion for Extension of Time, it is  
this 27th day of January, 1982, by the Circuit Court for Baltimore  
County:

ORDERED that the Petitioners-Appellants be allowed a  
thirty (30) day extension of time to transmit to the Clerk of the  
Court the record of the proceedings below. The court charges  
counsel with the duty to inform opposing counsel of the content  
of this order when signed.

Judge

True Copy Test  
ELMER H. KAHLINE, JR., Clerk  
Per [Signature]  
Assistant Clerk

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CLERK OF COURT  
BY

WHEREFORE, the Appellants pray this Honorable Court to  
pass an order (i) reversing the December 8, 1981 Order of the  
County Board of Appeals which denied the Petition for Reclassifi-  
cation, (ii) grant the requested Petition for Reclassification  
and (iii) for such other relief as may be just and appropriate.

151  
John B. Howard  
Cook, Howard, Downes & Tracy  
210 Allegheny Avenue  
P. O. Box 5517  
Towson, Maryland 21204  
Telephone - 823-4111  
Attorneys for Appellants

I HEREBY CERTIFY that on this 14th day of January, 1982,  
a copy of the foregoing Petition was mailed to the Board  
of Appeals for Baltimore County, Room 219 Court House, Towson,  
Maryland 21204.

151  
John B. Howard

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CLERK OF COURT  
BY

RE: PETITION FOR RECLASSIFICATION : IN THE  
from R.C. 4 to B.R. : CIRCUIT COURT  
E/S York Road 820' N :  
of Ashland Road : FOR  
8th District : BALTIMORE COUNTY  
Lawrence D. Pinkner, M.D. :  
and Robert A. Pinkner, : AT LAW  
Petitioners-Appellants :  
File No. R-82-73 : Misc. Docket No. 14  
Folio No. 8  
File No. 82-M-3

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 8-2(d) of the Maryland Rules of Procedure,  
John V. Murphy, Patricia Phipps and John A. Miller, constituting the County Board of  
Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the  
representative of every party to the proceeding before it; namely, Lawrence D. Pinkner, M.D.,  
and Robert A. Pinkner, 3635 Old Court Road, Baltimore, Md. 21208, Petitioners; John B.  
Howard, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioners; and  
John W. Hessian, III, Esq., Court House, Towson, Md. 21204, People's Counsel for  
Baltimore County, a copy of which Notice is attached hereto and prayed that it may be  
made a part thereof.

June Holmen  
County Board of Appeals of Baltimore County  
Rm. 200, Court House, Towson, Md. 21204  
Telephone-494-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has  
been mailed to Lawrence D. Pinkner, M.D. and Robert A. Pinkner, 3635 Old Court Rd.,  
Baltimore, Md. 21208, Petitioners; John B. Howard, Esq., 210 Allegheny Ave., Towson,  
Md. 21204, Counsel for Petitioners; and John W. Hessian, III, Esq., Court House, Towson,  
Md. 21204, People's Counsel for Baltimore County, on this 6th day of January, 1982.

June Holmen  
County Board of Appeals of Baltimore County

RE: PETITION FOR RECLASSIFICATION \* IN THE  
from R.C. 4 to B.R. \*  
E/S York Road 820' N \* CIRCUIT COURT  
of Ashland Road \* FOR BALTIMORE COUNTY  
8th District \*  
Lawrence D. Pinkner, M.D. \* AT LAW  
and Robert A. Pinkner \* Misc. Docket No. 14  
Petitioners-Appellants \* Folio No. 8  
File No. R-82-73 \* File No. 82-M-3  
\* \* \* \*

MOTION FOR EXTENSION OF TIME TO SUBMIT TRANSCRIPT

The Petitioners-Appellants, Lawrence D. Pinkner, M.D.  
and Robert A. Pinkner, by John B. Howard and Cook, Howard, Downes &  
Tracy, attorneys, requests a thirty (30) day extension of time  
pursuant to Maryland Rule B7(b) to transmit the record of the  
proceedings before the County Board of Appeals and in support  
of their request, state the following:

1. The court reporter, Carol Beresh, has informed  
your Petitioners-Appellants that she will be unable to transcribe  
the record within thirty (30) days from the date the Petition in  
the case was filed.

WHEREFORE, the Petitioners-Appellants respectfully  
request a thirty (30) day extension of time to have a certified  
copy of the proceedings transmitted to the Clerk of the Court.

151  
John B. Howard  
Cook, Howard, Downes & Tracy  
210 Allegheny Avenue  
P. O. Box 5517  
Towson, Maryland 21204  
Telephone: 823-4111  
Attorney for Petitioners-Appellants

I HEREBY CERTIFY that on this 23rd day of January, 1982,  
a copy of the foregoing Motion for Extension of Time was mailed to  
the County Board of Appeals for Baltimore County, Room 219 Court

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CLERK OF COURT  
BY



House, Towson, Maryland 21204 and John W. Hessian, III, Esquire,  
Court House, Towson, Maryland 21204, People's Counsel for Baltimore  
County.

*John B. Howard*  
John B. Howard

LAW OFFICES  
COOK, HOWARD, DOWNES & TRACY  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204  
JAMES D. C. DOWNES  
(1906-1979)  
923-4111  
AREA CODE 301  
January 5, 1981

HAND DELIVERED

Baltimore County Board of Appeals  
Room 219, Court House  
Towson, Maryland 21204

Attention: Mrs. Edith Eisenhart

Re: In the Matter of  
Lawrence D. Pinkner, M.D. and  
Robert A. Pinkner  
Petition for Reclassification

Dear Mrs. Eisenhart:

Enclosed please find a copy of the Order for Appeal  
in the above matter which was filed with the Clerk of the  
Circuit Court on January 5, 1982.

Very truly yours,

*John B. Howard*  
John B. Howard

JBH:ecd  
Enclosure

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COUNTY CLERK  
BY: [initials]

parcel is subject to road dedications for the future expansion  
of York and Shawan Roads, which drastically limit the amount of  
usable area; that the property is also subject to slope setback  
requirements and some severe topography, which further limit  
the developable area of the BR-zoned tract, and; expert  
testimony regarding the extensive site development costs which  
must be expended before the property can be commercially  
developed.

Petitioner's real estate expert, Larry Mekulski,  
testified that any reasonable commercial user for the limited  
area that can be developed under the existing zoning cannot  
economically support the extensive site development and utility  
costs connected with the property. The types of business users  
for the tract as presently zoned would, in effect, be too small  
to justify the cost necessary for development, and thus the  
owner is denied a reasonable return on his investment in the  
property. Mr. Mekulski testified, however, that if the  
reclassification is granted, a larger, single purpose user  
could utilize the property and the site development costs which  
need to be expended would be economically justified.

There was also testimony to the effect that strip  
commercial development, as presently exists on neighboring  
sites, would not be commercially practicable due to the  
proximity of the Hunt Valley Mall. Further, these neighboring  
tracts did not have the same site development costs and  
topography problems associated with the subject parcel, and  
thus are not comparable.

ISSUES

I. Were the requirements of Baltimore County Zoning  
Regulations Sec. 1.A03.2 met regarding the absence of any  
adverse effect on water quality?

II. What facts must a property owner present in order  
to establish a mistake or error in comprehensive zoning?

CONCLUSION

I. A professional engineer certified that the  
requirements of Art. 1.A03.2 of the Zoning Regulations had been  
met and reclassification may not be denied on the grounds of  
adverse impact on water quality on the basis of testimony or  
criteria beyond the requirements of the Regulations.

II. If the owner can demonstrate that the property  
cannot be profitably and economically developed under its  
current zoning, and thus the owner is deprived of the  
opportunity for a reasonable return, such a showing is strong  
evidence of error and will support a reclassification.

DISCUSSION

I. Water Quality

In the Posthearing Memorandum submitted by People's  
Counsel for Baltimore County, it is asserted that the only  
substantial testimony concerning any adverse effect on the Loch  
Raven Reservoir which might result from the rezoning was  
presented by Paul J. Solomon. Mr. Solomon is an Environmental  
Planner with the Baltimore County Office of Planning and Zoning  
and while he testified as to the general concern regarding  
adverse effects on the Reservoir by commercial and other land  
development, he did not, nor could he, controvert the fact that  
the requirements of Sec. 1.A03.2 of the Regulations had been  
met. In fact, Mr. Solomon acknowledged that he was involved  
with the drafting of this provision, and if the satisfaction of  
the requirements of the regulation were not sufficient to  
protect the watershed, then it is certainly reasonable to  
assume that they would have been made more stringent. Since

IN THE MATTER OF : IN THE CIRCUIT COURT  
LAWRENCE D. PINKNER, M.D. : FOR BALTIMORE COUNTY  
ROBERT A. PINKNER : AT LAW  
PETITION FOR RECLASSIFICATION :

ORDER FOR APPEAL

MR. CLERK:

Please enter an appeal to the Circuit Court for Baltimore  
County on behalf of Lawrence D. Pinkner, M.D. and Robert A. Pinkner,  
Petitioners, from the Order of the County Board of Appeals of  
Baltimore County, under date December 8, 1981 denying Petitioners'  
reclassification.

*John B. Howard*  
John B. Howard  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21204  
301-823-4111  
Attorney for Petitioners

I HEREBY CERTIFY that a copy of the above Order for  
Appeal was mailed this 5th day of January, 1982, to the County  
Board of Appeals for Baltimore County, Room 219 Court House,  
Towson, Maryland 21204.

*John B. Howard*  
John B. Howard

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COUNTY CLERK  
BY: [initials]

all the requirements of the Regulations have been met, a  
presumption arises that there will be no adverse impact to the  
water quality and Mr. Solomon did not offer any substantial or  
direct evidence that would overturn the presumption created by  
satisfaction of the statutory criteria. Moreover, Mr. Solomon  
did not present any testimony regarding any other adverse  
effect to the environment which would result from a granting of  
the reclassification petition.

It is well settled that neither the County nor any  
other governmental authority may rely on considerations or  
standards not expressed in the Zoning Regulations as grounds to  
deny a zoning request. When the evidence shows that there has  
been compliance with the subject regulations, it is arbitrary  
and capricious for the zoning authorities to render an adverse  
decision based upon considerations and testimony outside the  
scope of the regulation. In Steuart Investment Co. v. Board of  
Com'mrs., 38 Md. App. 381, 392-96 (1978), the Court of Special  
Appeals held that where all of the probative evidence was  
sufficient to show that the applicant's site plan had complied  
with the particular zoning ordinance, the action of the Board  
in requiring an additional environmental impact analysis  
resulted in an arbitrary and capricious denial of the requested  
permit. In Steuart, the Board's requirement of an  
environmental impact analysis not expressed in the regulations  
was unjustified and it was held that a denial of a permit based  
upon such failure was arbitrary and unreasonable. Id. at 398.  
See also cases cited in Steuart at 392-95, Baltimore Planning  
Commission v. Victor Development Co., Inc., 261 Md. 387, 392-95  
(1971) and Maryland National Capitol Park and Planning Comm'n  
v. Rosenberg, 269 Md. 520, 530 (1973).

IN THE MATTER OF : BEFORE THE  
PETITION FOR RECLASSIFICATION : COUNTY BOARD OF  
LAWRENCE D. PINKNER, M.D., : APPEALS FOR  
et al. : BALTIMORE COUNTY  
Petitioner : Item No. 13,  
Cycle No. 1  
\* \* \* \* \*

MEMORANDUM IN SUPPORT OF RECLASSIFICATION

FACTS

The subject parcel had been zoned BR in its entirety  
prior to the adoption of the 1976 Comprehensive Zoning Map.  
The County Council, upon adoption of that Map, severed the  
subject property by reclassifying the rear two-thirds as RC-4  
and continuing the BR zone in an area consisting of 4.75 acres,  
fronting on York Road. This severance was perpetuated by the  
County Council upon its adoption of the 1980 Comprehensive Map.

At the time of hearing on the subject Petition, James  
S. Spamer, a professional engineer who had made engineering  
studies with respect to the subject parcel over a period of  
several years, certified in writing that the requirements of  
Baltimore County Zoning Regulations, Sec. 1.A03.2, for the  
reclassification of RC-4 zoned property had been met. Further,  
Mr. Spamer testified that, in his expert opinion and based upon  
all the facts and circumstances, the proposed reclassification  
would not impair water quality in any respect. There was no  
evidence at the hearing to contradict the fact that all the  
requirements of Sec. 1.A03.2 regarding water quality had been  
met.

Further, the evidence presented at the hearing  
demonstrated that a large portion of the presently zoned BR

It is respectfully submitted that Mr. Solomon's  
testimony did not overcome the presumption created by  
compliance with the applicable Regulations regarding water  
quality and protection of the watershed. The Board may not  
require the Petitioner to comply with standards not expressed  
in the Regulations nor consider testimony regarding the general  
effects of development on watershed areas.

II. Error

While a presumption of correctness attaches to  
comprehensive zoning, production of strong evidence of mistake  
or error in the original zoning will sustain a change from such  
zoning. Stratakis v. Beauchamp, 268 Md. 643, 652-53 (1973).  
Once such strong evidence of error is produced, the decision of  
the Board of Zoning Appeals to grant a reclassification may  
only be overturned if that action is arbitrary and capricious  
and therefore not in accordance with the evidence.

A leading case discussing the standards which must be  
met in order to overturn comprehensive zoning is Boyce v.  
Sembly, 25 Md. App. 43 (1975). In Boyce, the Court of Special  
Appeals stated that the presumption of validity accorded to  
comprehensive zoning is overcome only when there is probative  
evidence to show that the assumptions or premises relied upon  
by the Council at the time of the comprehensive zoning were  
invalid. Error can be demonstrated under this standard in two  
ways. The property owner can show that the Council failed to  
take into account the then existing facts or trends which were  
reasonably foreseeable in the future, so that the Council's  
action was premised initially on a misapprehension.

Alternatively, error may also be established by showing that  
events occurring subsequent to the comprehensive zoning have



proven the Council's initial premises to be incorrect. Id. at 52.

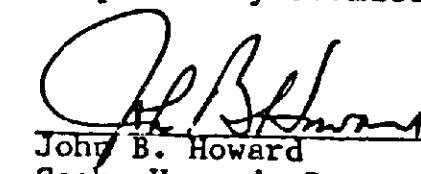
In order to establish error based on a failure to take existing facts or events reasonably foreseeable to occur into account, the Court of Special Appeals has stated that it is necessary not only to show that the facts existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. Id. Examples of the latter type of proof are illustrated by showing: (1) specific physical facts which were not readily visible or discernable at the time of the comprehensive zoning, i.e., mine shaft and subsurface rock formation, see Bonnie View Club v. Glass, 242 Md. 46 (1966); (2) effects of topography, see Overton v. County Commissioners, 225 Md. 212 (1961); or (3) that the Council failed to make any provision to accommodate a project, trend or need which the Council itself recognized as existing at the time of the comprehensive zoning; see Jobar Corp. v. Rodgers Forge Community Association, 236 Md. 106 (1964).

It is submitted that the Council failed to take into account the required road dedications, topographical problems and extensive site development costs for the subject property and thus committed error. The only competent evidence presented at the hearing showed that any reasonable use under the existing zoning would be unprofitable to the owner and economically unfeasible. If the Council had properly considered the effect of these factors, it would not have limited the BR zoning to such a small tract, and its decision to so limit the BR zoning must have been based on the misapprehension that commercial development was feasible.

parcel, in an effort to establish that the severe topographic characteristics of Petitioner's could be remedied to permit feasible development of the existing zoned area. Although Mr. Hoswell has excellent planning credentials, he is not a site developer, professional engineer or qualified real estate expert and his testimony in this regard should be totally disregarded. Moreover, it was established that the topography of the Goodyear site is quite different and thus there can be no comparison of the two properties. There was no testimony presented by People's Counsel to contravert that of Petitioner's real estate expert to the effect that the proximity of Hunt Valley Mall rendered strip commercial development of this site impracticable.

It is submitted that the evidence adduced at the hearing demonstrates that the site development costs are so extensive that no permitted use under the existing amount of BR zoning could be profitably maintained. Thus, there is sufficient evidence of error by the Council and the Petitioner is entitled to the requested reclassification.

Respectfully submitted,

  
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301-823-4111  
Attorney for the Petitioner

Contrary to the assertion in the People's Counsel's Memorandum, Petitioner is not attempting to establish a confiscation of the tract. Rather, the Petitioner's evidence is intended to show that the Council committed error by limiting the BR zoning to such a small area that, in light of the particular circumstances of this property, the owner is denied a reasonable return and development of the property under current conditions is economically impracticable. A review of recent cases applying this standard illustrates that error has been found when the property's zoning does not allow profitable development.

In Boyce, the applicants contended that at the time of the comprehensive rezoning in 1971, the Council erred in placing the subject property in DR 5.5 zone instead of BR because the property was unsuitable for residential development. The expert witness testified to the fact that it was "unsuitable" for residential development because of its physical characteristics and its proximity to railroad tracks. Also, the evidence showed that much of the land in the western sector of the property lay in the flood plain and was not useable at all; that a bridge across a stream would have to be constructed at great expense; and that the maximum permitted density of 35 units could not be achieved. Id. at 53-54.

In that case the appellant's expert also admitted, however, that there was a residence located on the western portion of the tract. He also conceded that single-family development had taken place on the adjoining west and north sides of the tract, which had similar topography, that development existed along the right-of-way of the railroad and failed to prove that residential development, other than single-family, would be unprofitable. Id. at 54-55.

RE: PETITION FOR RECLASSIFICATION : BEFORE THE BOARD OF APPEALS  
from R.C. 4 to B.R. Zone  
E/S York Rd. 820' N of Ashland Rd. : OF BALTIMORE COUNTY  
9th District  
LAWRENCE D. PINKNER, M.D., :  
Petitioner : Case No. R-82-73

POST-HEARING MEMORANDUM

People's Counsel for Baltimore County submits the following Post-hearing Memorandum:

In this "open plan" zoning reclassification case brought pursuant to Section 2-58.1 of the Baltimore County Code, the burden is upon the Petitioner to produce strong evidence of error. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975), Coppolino v. County Board of Appeals of Baltimore County, 23 Md. App. 358, 328 A.2d 55 (1974), Stratakis v. Beauchamp, 233 Md. 643, 304 A.2d 244 (1973).

To assist the Board in consideration of the evidence presented on October 28, 1981, we call the Board's attention to the following:

I. ERROR

The existing zoning classification is R.C. 4, intended to protect the watershed. BCZR Sec. 1A03, et seq. In this context, expert testimony pertinent to environmental considerations is important.

Assuming arguendo that Petitioner's submission of the letter of James S. Spamer dated October 28, 1981 constitutes an "environmental impact statement" as required (1A03.2A.3.), there was no cogent testimony to support the bald conclusion that the proposal will not impair water quality. The opinion of an expert is entitled to no more weight than the facts and reasoning upon which it is based. A. H. Smith Sand and Gravel Company v. Department of Natural Resources, 270 Md. 652, 313 A.2d 820 (1974).

Paul J. Solomon, Environmental Planner, Baltimore County Office of Planning and Zoning, provided the sole substantial testimony concerning the adverse effect on Loch Raven Reservoir which probably would result from the rezoning. Mr. Solomon amply described the recent history of the reservoir, and the growing understanding, concern, and evidence of

The court held that the evidence was insufficient to make a question of error or mistake fairly debatable because the conclusion that the subject property was unsuitable for residential development was not supported by adequate reasons or facts, in that the property owner did not prove that the cost of residential development of the property would deny a reasonable return, nor did the owner sufficiently distinguish neighboring sites which had been residentially developed. Id. at 55. In contrast to Boyce, the evidence in this case is uncontroverted that a reasonable return is impossible under current zoning and the Petitioner's experts distinguished the neighboring uses.

An example of a case where the property owner was successful in proving a mistake is Howard County v. Dorsey, 45 Md. App. 692 (1980). In Dorsey, there was evidence that the property had been zoned residential as part of a comprehensive plan for a neighborhood of which it was not part. There was also evidence that the property was completely bordered by industrial uses and therefore not adjacent to any residential uses. The court relied on the fact that the property was completely unsuitable for residential development due to the character of the surrounding industrial parcels, making extremely unlikely any profitable residential development, and the lack of adequate access. Id. at 713.

In Tennison v. Shomette, 38 Md. App. 1 (1977), the court held that sufficient evidence of mistake was present where property was not close to a residential neighborhood, access would require crossing of a dual-lane highway, and permitted uses under the existing zone would create traffic problems. Thus substantial facts supported the conclusion that

"urban runoff" or "nonpoint-source pollution" related to commercial and other intense land development.

Accordingly, Petitioner failed to prove error insofar as the character of the neighborhood and the specific legislative intent to protect the watershed was concerned.

II. INTERPRETATION OF SECTION 1A03.2.A

The Board expressed concern, at the conclusion of the hearing, that this section, as amended (Bill 178-79), might indicate that a petition for rezoning not disqualified by the specific locational, topographic, and environmental requirements of said section, should automatically be granted. To this proposition, we state the following:

1. The language of the section confers no such automatic right. The phraseology is in the negative and merely indicates a disqualification of certain petitions.
2. The Board of Appeals in the case of Wilson Mainster, Case No. R-79-13 (Item 12, Cycle IV), decided, under Bill 98-75, that the section provided minimum requirements, but was not intended to waive proof of error. (A copy of this decision is attached.)
3. Bill 178-79 in no way changed the thrust of the phraseology. It remains as a prohibition, not an express permission or grant. The apparent intent was to eliminate the anomaly of the Zoning Commissioner refusing even to receive a petition.
4. Paul Solomon testified to the contemporaneous interpretation of his office that the section continued as a minimum requirement, and that the mere meeting of those standards was not sufficient to conclude that the watershed would be protected. The contemporaneous interpretation of administrative officials entrusted with implementation of the ordinance is entitled to great weight. Swarthmore Company v. Kaestner, 258 Md. 517, 266 A.2d 341 (1970).

5. People's Counsel as well as counsel for Petitioner, while recognizing the amendment to Bill 178-79, both expressed an understanding that proof of error was still required under Section 2-58.1 of the Baltimore County Code, which contains no exception for R.C. 4 reclassifications.

For all of these reasons, we submit that Section 1A03.2 is a point of beginning, and not a point of ending, in R.C. 4 zoning reclassification cases; and the Board should so rule.

the property was not suitable for the uses permitted in the present zone.

As illustrated by the cases discussed above, whether the owner has been denied any reasonable use is part of the standard to determine whether the existing zoning is correct. The test of whether the owner has been denied reasonable use under existing zoning is not whether it is physically possible to develop a permitted use, but whether such development provides the owner with a reasonable return on his investment. For example, in Bonnie View Club v. Glass, 242 Md. 46 (1966), even though the experts testified that it was physically possible to develop the tract for single-family homes (the existing zoning), it was not economically profitable to do so because of the excessive costs caused by topography and subsurface conditions. Id. at 50-51. The denial of any return to the owner under the existing zoning was sufficient to support a reclassification in Bonnie View Club to permit apartments. Id. at 52. Economic unfeasibility due to peculiar site development costs under the existing zoning also supported reclassification in Overton v. County Commissioners, 224 Md. 46 (1966), and the applicant was not required to show complete impossibility of any permitted use. Accord, Kracke v. Weinberg, 197 Md. 339, 346 (1951) ("not practical from a financial point of view to use property for residential purposes" supports reclassification).

The only qualified testimony at the hearing regarding the site development costs, topographical problems and economically justified uses for the subject parcel came from the Petitioner's experts. James Hoswell, the County Planner who testified on behalf of People's Counsel, cited development of the Goodyear Tire property, to the south of the subject

III. CONFISCATION

The Petitioner appeared to place greatest reliance on the alleged confiscation of the tract, in its entirety, under the existing zoning. A careful review of the testimony, however, shows that the heavy burden was not met. The Court of Special Appeals said in Stratakis, 268 Md. at 654,

"In order to obtain a rezoning on the basis of an unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone."

Moreover, the allegation of confiscation may be negated by evidence of recent or existing development on nearby land with the same zoning classification.

In the present case, the Petitioner's evidence concentrated on a cost analysis based upon a potential commercial undertaking by Chesapeake Cadillac. The engineering cost estimate and consultation focused on this single prospect. There simply was no attempt to review all the permitted uses in the existing zoning or to express an opinion that no reasonable use was left to the Petitioner.

This point is highlighted by the admission of Petitioner's real estate expert that costs vary depending on the specific use, even within the general commercial category. Not only are the cost figures suspect, but also the estimates of market value for commercially zoned property. The real estate expert did not submit a formal appraisal and obviously had not undertaken a detailed study of comparable sales.

In any event, James Hoswell, County Planner responsible for review of reclassification petitions, produced uncontradicted evidence of the development of a Goodyear tire and automotive service station on nearby property, commercially zoned, approximately the same size of the front part of Petitioner's tract, within the last eighteen months. The reality, as indicated by photographic exhibits, is that the east side of York Road, commercially zoned to a depth of 300 feet, is occupied uniformly by strip commercial development, including the Goodyear center as well as Arco and Exxon gasoline stations.

Evidence was also presented as to the topography of the site fronting on York Road. Notwithstanding Mr. Spamer's exaggerated and vague description of the topography as



